

PURCHASING AND LICENSING COMMITTEE

11-0502R

RESOLUTION IN THE MATTER OF THE ON SALE INTOXICATING
LIQUOR LICENSE OF GRANDMA'S SPORTS BAR/GRILL, INC.
(BELLISIOS ITALIAN RESTAURANT), 405 LAKE AVENUE SOUTH.

CITY PROPOSAL:

BE IT RESOLVED, that the city council of the city of Duluth makes the following findings of fact:

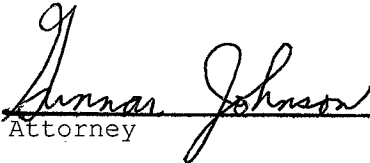
(a) On August 3, 2011, the alcohol, gambling and tobacco commission held a public hearing to consider whether disciplinary action should be taken against the intoxicating liquor license of Grandma's Sports Bar/Grill, Inc. (Bellisios Italian Restaurant), 405 Lake Avenue South, and has submitted its report to the city council of the city of Duluth as Public Document No. _____;

(b) Pursuant to Duluth City Code Chapter 8, Section 9, clause (a), on October 10, 2011, the city council considered the records and evidence submitted;

(c) The finding of facts as set forth in Public Document No. _____ regarding any suspension, revocation and/or civil penalty relating to the on sale intoxicating liquor license of Grandma's Sports Bar/Grill, Inc. (Bellisios Italian Restaurant), 405 Lake Avenue South, are adopted.

BE IT FURTHER RESOLVED, that the decision of the city council regarding any suspension, revocation and/or civil penalty is as follows: that the city council impose a \$500 civil penalty; and that payment of \$300 of the penalty be payable within 30 days of final council action, and \$200 of the penalty be stayed for a period of one year on the condition that the licensee have no same or similar offenses with the one year.

Approved as to form:



Attorney

CLERK JJC:mao 9/22/2011

STATEMENT OF PURPOSE: The alcohol, gambling and tobacco commission (AGTC) held a hearing on August 3, 2011, regarding the liquor license of Bellisios Restaurant. The police department conducted alcohol compliance checks on October 6, 2010, and the licensee was ticketed for selling alcohol to an underage person. This is the first offense for the licensee, and Section 8-9 provides that the presumptive penalty for a first offense is a \$500 penalty. Based on mitigating circumstances, the recommendation of the AGTC is to impose a civil penalty of \$500, with \$300 payable within 30 days of council action, and \$200 is stayed for one year pending no further violations.

CITY OF DULUTH
ALCOHOL, GAMBLING AND TOBACCO COMMISSION

REPORT TO THE CITY COUNCIL

IN THE MATTER OF: **Grandma's Sport Bar/Grill, Inc., d/b/a Bellisios Italian Restaurant**,
405 Lake Ave. South, Duluth, Minnesota 55802.

The above-entitled matter came on for hearing before the Duluth Alcohol, Gambling and Tobacco Commission on August 3, 2011, in the City Council Chambers in Duluth, Minnesota. The hearing record closed on August 3, 2011, upon completion of the hearing.

Terri L. Lehr, Assistant City Attorney, City of Duluth, Office of the City Attorney, 410 City Hall, Duluth, Minnesota, 55802, appeared on behalf of the City licensing staff. Licensee appeared through its managing agent, Angie Dormanen, along with an employee, Chelsea Jansen.

This Report is a recommendation, not a final decision. The Duluth City Council will make the final decision after a review of the record which may adopt, reject or modify the Findings of Fact, Conclusions and Recommendations contained herein. Pursuant to Minn.Stat. §14.61, the final decision of the Council shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by the Report to file exceptions and present argument to the City Council. Parties should contact the City Clerk to ascertain the procedure for filing exceptions or presenting argument.

FINDINGS OF FACT

The commission makes the following findings of fact:

1. Grandma's Sport Bar/Grill, Inc. d/b/a Bellisios Italian Restaurant, is licensed by the City of Duluth to sell "on-sale" intoxicating liquor at the premises located at 405 Lake Avenue South, Duluth, Minnesota 55802.
2. On October 6, 2010, Chelsea Lynn Jansen, an employee of Licensee, sold and served an alcoholic beverage to an underage person at Licensee's business

establishment known as Bellisios Italian Restaurant. Jansen was cited for the violation and convicted on October 14, 2010.

- 3 Licensee was cited under Duluth City Code section 8-35 for the unlawful sale and convicted of this offense on 5/16/2011, paying a fine of \$200.00.
4. The Commission then issued its Notice of and Order for Hearing and set a hearing date of August 3, 2011.
5. Section 8-9(b)(1) of the Duluth Legislative Code provides that grounds for disciplinary action include the operation of the liquor establishment in violation of any law. Section 8-35 provides that every licensee shall be responsible for the conduct of the licensee's place of business and that any violation of Chapter 8 of the Duluth Legislative Code committed on the licensed premises by an employee of the licensee shall be deemed the act of the licensee as well as the employee.
6. This is the Licensee's first violation for purposes of the presumptive penalty. Mitigating circumstances include the following: This is the first violation for this Licensee during the eight years that Angie Dormanen has been the manager. The employee who committed the violation had an incident report placed in her file by her employer and she also participated in a training following this incident.

CONCLUSIONS

Based upon these facts, the commission makes the following conclusions:

1. That the violations alleged in the Notice of Hearing occurred.
2. That the Licensee is liable for the violations occurring on its licensed premises on October 6, 2010.
3. Section 8-9(c) of the Duluth City Code provides that the presumptive penalty for a first offense is a \$500.00 civil penalty. However, mitigating circumstances exist as follows: This is the first violation for this Licensee during the eight years that Angie Dormanen has been the manager. The employee who committed the

violation had an incident report placed in her file by her employer and she also participated in a training following this incident.


RECOMMENDATION

It is the recommendation of the Duluth Alcohol, Gambling and Tobacco Commission that the Duluth City Council impose the following civil penalty:

1. Payment of a \$500.00 penalty; and
2. That payment of \$200.00 of the penalty be stayed for a period of one year on the condition that the Licensee have no same or similar violations; and
3. That payment of \$300.00 of the penalty be made within 30 days of final council action.

Dated: 9/7/2011

DULUTH ALCOHOL, GAMBLING
AND TOBACCO COMMISSION

By: 
George Hanson, President

Alcohol, Gambling, and Tobacco Hearing
August 3, 2011
Grandma's Sport Bar/Grill, d/b/a Bellisio's Italian Restaurant. 405 Lake Ave. S.

ANGELA DORMANEN: I'm the general manager of Bellisios Italian Restaurant and Wine Bar.

CHELSEA JANSEN: I'm the server and bartender at Bellisios.

HANSON: The kind of procedure we usually go through here is, the City presents their case and you have the opportunity to ask any questions you want. You present your case and then we usually discuss it. We try to make recommendations to the city council for whatever actions, if any. We have rules we have to go by and we have past patterns and practices that we have to abide by. If at any time, you feel that you are missing out on an opportunity to ask questions, please feel free to speak up because I want you to be heard. You will have a chance to speak. I guess we will start with city attorney, Lehr, would you want to proceed then.

LEHR: For the commissioner's information, I did speak with Ms. Dormanen on the telephone about this matter, and she is not disputing the violation. I'll briefly summarize the violation, and if Ms. Dormanen wants to address the commissioners regarding remedial action that the licensee has taken since this incident. The underlining basis of this matter was a sale on October 6, 2010, at Bellisio's Restaurant. The sale was made by Ms. Jansen who is present here today. Ms. Jansen was convicted of a violation and she paid the ticket on October 14 of last year. It involved a payment of a \$200 fine. As a standard process the licensee was also ticketed. This was another one of those few remaining cases where the ticket was first issued in district court, and then it was in limbo, so we just dismissed that and reissued the admission of penalty ticket. Once the administrative penalty was issued, the licensee did pay that fine and that was paid on May 16th of this year. This is a first offense and so in the city code, it's a presumptive penalty of a \$500 fine.

HANSON: Anything more to offer?

LEHR: No, at this point, I would rest on the documents that are filed with the notice of hearing.

HANSON: Do you have any questions or anything you would like to say?

DORMANEN: We don't, but that Chelsea has gone through alcohol training since

this violation has taken place and our whole staff does every year in the spring. We hope that this is something that doesn't reoccur in our business again.

HANSON: Out of curiosity, did the person look like they were old enough that they needed to be carded? I was just curious why they weren't carded.

JANSEN: Honestly, between me and the other bartender that was working at the time, there was a lack of communication. I take full responsibility. She had been talking to him and taking his order, but had never physically given him the beer. As I was walking past him, I was on my way out the door, he was very short and angry with me and said, "Can I get my Miller Light"? Upset. So, I thought she had carded him because he said he had talked to her and that is basically what happened. He looked like he was in his younger 30's, in my opinion.

HANSON: If I walk in your bar and give you a dirty look, are you going to card me?

DORMANEN: Now she will, yes. Dirty look or good look, she will.

HANSON: You should card if there is any doubt in your mind, card. Do you have anything further to offer? Do you, by chance, keep an incident log or anything?

DORMANEN: We do, yes. This incident is in Chelsea's file along with at our corporate office.

HANSON: You've been checked previously. You have been informed of when you passed successfully. I don't think I have ever seen you in here before.

DORMANEN: No, I have never been.

HANSON: How long have you been a manager down there?

DORMANEN: I have been with Grandma's operation for 18 years.

HANSON: How long have you managed Bellisio's?

DORMANEN: Eight years.

HANSON: I have no further questions. Gentlemen, questions? I'll be looking for an action motion, here, I guess. Recommendation?

BIRCHLAND: I know the corporation does a lot of training. We have had them in here before talking about the training. They do, and obviously, have had eight years of not being in here might be a reason, I don't know. Unless I can hear something different, I would have to go along with the recommended penalty.

HANSON: Are you making a motion?

BIRCHLAND: Unless someone else has some discussion that may change my mind.

HANSON: The procedure is to make a motion and somebody seconds it and then we discuss it. If nobody seconds it, the motion fails. Then we have to move on. If anyone else wants to discuss, let's go ahead and discuss.

BIRCHLAND: I'll go along with normal procedure. I would move that we go along with the recommended penalty which is \$500.

HANSON: For a first offense that is normal.

I'll second.

HANSON: A motion has been made and seconded. Any discussion from the board?

DONAHUE: Well, just to clarify yourself, what goes on now is we only suggest to the council, and then like Commissioner Birchland was saying about mitigating circumstances. If anyone can give me a mitigating circumstance because if you read the police report it is pretty cut and dried. At times it is like we make suggestions, but it just gets overruled. It is like shooting yourself in the foot. I'm just sort of in the same quandry of mitigating circumstance. Can you think of one Commissioner Hanson or Stauber?

HANSON: I might see one issue here. It has been since October of last year. It is a long time to wait for the wheels of justice to turn or whatever. The other thing was the statement by the server that there was kind of a mix up in communication. Kind of tricky type of thing. I'm not so sure I'm in favor of that kind of behavior. Whether that warrants a recommendation or a stay of a partial fine or a lower amount, I'm not sure. Those are two things that I observed that I think might warrant a little clemency.

STAUBER: I'd be okay staying a portion of the fine.

HANSON: Would you care to amend?

STAUBER: Sure. I would move to amend that the fine be \$300 payable 30 days after council action and stayed \$200 pending no further violations within the next year.

BIRCHLAND: We would accept that as a friendly amendment.

DONAHUE: I second it.

HANSON: Any further discussion? Motions made and seconded. All in favor say, aye. Motion passes unanimously.

Our recommendation, as you heard is \$300, behave yourselves for a year and the \$200 goes away, payable in 30 days. The City Council will have this, very likely, on their consent agenda and you will be notified by the city clerk. I would suggest because we recommend that something other than the standard that you show up at that council meeting to speak on your behalf in the event that there is a council member chooses to pull it off the consent agenda and try to invoke the full fine. It has happened before so we have no control over that.

DORMANEN: Thank you.

CITY OF DULUTH
ALCOHOL, GAMBLING AND TOBACCO COMMISSION

NOTICE OF AND ORDER FOR HEARING

TO: GRANDMA'S SPORT BAR/GRILL, INC., d/b/a Bellisios Italian Restaurant,
405 Lake Ave. South, Duluth, Minnesota 55802.

PLEASE BE ADVISED that on **August 3, 2011**, at **4:45 p.m.** in the Council Chambers at City Hall in the City of Duluth, the Duluth Alcohol, Gambling and Tobacco Commission will hold a hearing, pursuant to Minnesota Statutes §340A.415 and Section 8-9 of the Duluth City Code, to consider what, if any, disciplinary action, including suspension or revocation or a civil fine of not to exceed \$2,000, will be recommended to the Duluth City Council with respect to your intoxicating liquor license.

If you do not appear at said hearing, the Alcohol, Gambling and Tobacco Commission may, in your absence, recommend that the Duluth City Council consider the allegations contained herein to be true.

At the above-mentioned hearing, you may, at your option, be represented by legal counsel.

The Rules for Contested Case Hearings Minnesota Rules Chapter 1400, Part 5550, et.seq, to the extent applicable, and Minnesota Statutes §14.57 through §14.69 govern. Copies of these laws and rules may be obtained at the Duluth Public Library or online from the official web site of the State of Minnesota.

The City will present its case, and then you will have an opportunity to present your case. At the time of the hearing, you should be prepared to produce any evidence and arguments you feel are relevant to the issues raised. You or your attorney will be allowed

to cross-examine all adverse witnesses. If needed, subpoenas are available (Minnesota Rules 1400.7000).

You must advise the Commission if you seek to admit evidence that is classified not public. If data that is not public is admitted, it may become public. Relief is available under Minnesota Statutes §14.60, subd. 2. If an interpreter is needed, you must inform the Commission and one will be appointed.

A notice of appearance must be filed with the City Clerk within 20 days of the date of service of the notice of hearing if you intend to appear at the hearing unless the hearing date is less than 20 days from the issuance of the notice of hearing.

The person representing the City, who you should contact to discuss settlement or other concerns is Terri L. Lehr, Assistant City Attorney.

The hearing will be open to the public.

The following facts give rise to the inquiry and hearing mentioned above:

1. Grandma's Sport Bar/Grill, Inc. d/b/a Bellisios Italian Restaurant, is licensed by the City of Duluth to sell "on-sale" intoxicating liquor at the premises located at 405 Lake Avenue South, Duluth, Minnesota 55802.
2. On or about October 6, 2010, Chelsea Lynn Jansen, an employee of Licensee, sold and served an alcoholic beverage to an underage person at Licensee's business establishment known as Bellisios Italian Restaurant. Jansen was cited for the violation and convicted on October 14, 2010. *See City Docs. 1-3 (Duluth Police Department Report ICR# 10-381072; City of Duluth Ordinance Violation Ticket LP10000331; and Proof of Payment of \$200 fine).*
3. Licensee was cited under Duluth City Code section 8-35 for the unlawful sale and convicted of this offense on 5/16/2011, paying a fine of \$200.00. *See City Docs. No. 4-5 (City of Duluth Ordinance Violation Ticket LP10004054 and Proof of Payment of \$200 fine on 5/16/2011.)* (NOTE: The Licensee was initially cited with a district court ticket, but because it was in "limbo" for

several months in the court system, the City Attorney's Office dismissed it. The administrative ticket was then issued in its place.)

4. This is the Licensee's first violation for purposes of the presumptive penalty under Duluth City Code.
5. Pursuant to Duluth City Code section 8-9, absent aggravating or mitigating circumstances, the presumptive penalty for the current violation is a \$500 civil penalty.

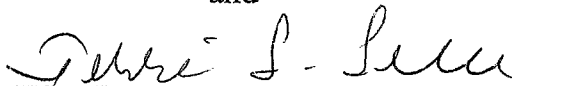
Pursuant to City Code Sections 8-9(a) and (b)(1) the Alcohol, Tobacco and Gambling Commission will consider whether the violation alleged is good cause for suspension or revocation of the liquor license or for the imposition of a civil penalty.

(Records Supporting This Notice Are Attached As City Document Numbers 1-5.)

Dated: 6/29/11

JEFFREY J. COX, Secretary
Alcohol, Gambling and Tobacco
Commission

and



TERRI L. LEHR, (0191668)
Assistant City Attorney

Gunnar B. Johnson, City Attorney
Attorneys for the Alcohol, Gambling and
Tobacco Commission

Duluth Police Department
Main Office

Reported Date: 10/06/2010 Time: 20:03 Case No.: 10381072
Code: DU8.28 Crime: DPD-LIQUOR-SALES TO MINORS PROHIBITED
Class: M4199 Occurrence Date: 10/06/2010
Location: 425 S LAKE AVE, 1DU, DULUTH, MN, , 55802

===== NARRATIVE =====

SYNOPSIS

This report involves the arrest of CHELSEA LYNN JANSEN (DOB 12-22-1988) for selling alcohol to a minor. JANSEN is a bartender at the Bellisio's Restaurant and Bar and was issued an administrative citation with her selling alcohol to a minor under city ordinance 8-27.

NARRATIVE

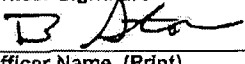
On 10-06-2010, I, Officer Stovern/#327 along with Officer Rodman/#323 was working alcohol compliance checks along with 20-year old NICHOLAS EDWARD PRACHAR (DOB 02-26-1990). At approximately 2003 hours, we asked PRACHAR to enter the Bellisio's Restaurant and walk up to the bar and order an alcoholic beverage. We walked in behind him and watched as he sat at the bar and was served a bottle of Bud Light beer which was actually poured into a glass for him. He paid for the beer, then got up and walked away.

Officer Rodman and myself then walked up to the bartender who served PRACHAR and introduced ourselves as police officers. She identified herself with a Minnesota photo ID as CHELSEA LYNN JANSEN (DOB 12-22-1988). JANSEN was issued an administrative citation charging her with selling alcohol to a minor under city ordinance 8-27.

**CITY OF DULUTH
CITY ORDINANCE VIOLATION**

This Citation charges you with a violation
of a Duluth City Ordinance.

For more information, see the reverse side of this ticket.

ICR Number 10-381072		Date/Time Issued 10-6-10 20:03	
Alleged Violator's Name CHELSEA LYNN JANSEN			
Address 901 BOULDER DR #402		City 55801	State AK
DOB 12-22-88		Phone Number 320-522-1862	
Vehicle Information			
License No.	State	Reg. Expires	
Vehicle Make	Model	Color	
Violation Information			
Date of Violation 10-6-10		Time of Violation	
Location BALISOR			
Charge SAL ALCOHOL TO MINOR		Ordinance No. 8-28	
Description MINOR NICHOLAS FRASCHAR SOLD BVD LIGHT BEER. WAS NOT CARVED			
Officer Signature 			
Officer Name (Print) STEVEN		Badge No. 327	
Served: In person <input checked="" type="checkbox"/> By mail <input type="checkbox"/>		Positively Identified <input checked="" type="checkbox"/>	
Date Due: 10-16-10		Minimum Fine Amount Due: <input type="checkbox"/> \$50.00 <input checked="" type="checkbox"/> \$200.00 <input type="checkbox"/> \$400.00	
Ticket Number: LP10 000331			

**CITY OF DULUTH
CITY ORDINANCE VIOLATION**

This Citation charges you with a violation
of a Duluth City Ordinance.

For more information, see the reverse side of this ticket.


ICR Number 10-381072	Date/Time Issued 5-6-2011 @ 0927
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Alleged Violator's Name Grandma's Sport Bar/Grill Inc			
Address 405 Lake Ave S	City Duluth, MN	State MN	Zip Code 55802

DOB _____	Phone Number _____
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Vehicle Information		
License No. _____	State _____	Reg. Expires _____
Vehicle Make _____	Model _____	Color _____

Violation Information	
Date of Violation 10-6-2010	Time of Violation 2003
Location 405 Lake Ave S	
Charge Licensee liable	Ordinance No. 8-35
Description employee sold to underage licensee liable for sale.	

Officer Signature 
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Officer Name (Print) Cha Vang	Badge No. 38
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Served: In person <input type="checkbox"/>	Positively Identified <input type="checkbox"/>
By mail <input checked="" type="checkbox"/>	

Date Due: 5-19-2011	Minimum Fine Amount Due: <input type="checkbox"/> \$50.00 <input checked="" type="checkbox"/> \$200.00 <input type="checkbox"/> \$400.00
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Ticket Number:	LP10 004054
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Sign On Sign Off Stop

Main Forms
Query
Other

Permit Maintenance

Officer Maintenance

Daily Ticket Report

Increase Fine

Decrease Fine

Ticket Notes

Plate Notes

Alternate Name

Request HH Ticket

Vehicle Tow Permit

Local Ordinances

Web Payment Form

Local Ordinance Ticket Inquiry 2 Version 1.0.4

Ticket Info

Ticket Number
LP10004054
Issue Date
10/06/2010
Issue Time
20:03

Defendant Info

Driver's Lic/State/D08
Name Last/First/MI
Street Address
City/State/Zip
GRANDMAS
SPORT BAR
405 LAKE AVE. S.
DULUTH MN 55802

Ticket Detail

Free Amount:	200.00	Paym. Entered:	05/26/2011
Penalty:	50.00	Return Date:	
Miscellaneous:	.00	Notice1 Date:	05/24/2011
Bad Check Fee:	.00	Notice2 Date:	
Paid Amount:	200.00	Notice3 Date:	
Dismissed:	50.00	Notice4 Date:	
Amount Due:	.00	Partial Notice	
Disposition:	DS	Collection Letter	
Disp. Date:	05/16/2011	Ticket Type:	Manual
Tkt. Entered:	05/10/2011	Ticket Status:	REDUCED